

Judge Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER W. McINTOSH,

Defendant.

NO. CR05-0133Z

GOVERNMENT'S SENTENCING  
MEMORANDUM

Comes now, the United States of America, by and through John McKay,  
United States Attorney for the Western District of Washington, and Andrew C. Friedman,  
Assistant United States Attorney for said District, and files this Government's Sentencing  
Memorandum.

**I. INTRODUCTION**

Defendant, Christopher W. McIntosh, is before the Court for sentencing following  
his guilty plea to arson in violation of Title 18, United States Code, Section 844(i).  
McIntosh is scheduled to be sentenced at 1:30 p.m. on December 16, 2005.

**II. PRESENTENCE REPORT**

The Government has no objection to the facts, or to the calculation of McIntosh's  
sentencing range under the United States Sentencing Guidelines, set forth in the  
Presentence Report. As set forth in the Presentence Report, McIntosh's Offense Level is  
24, and his Criminal History Category is IV. As a result, McIntosh's sentencing range is  
77-96 months. McIntosh's Plea Agreement, which was entered pursuant to Federal Rule

1 of Criminal Procedure 11(c)(1)(C), provides that the parties have agreed that McIntosh's  
2 sentence should be between 96 and 120 months.

### 3 **III. SENTENCING RECOMMENDATION**

4 The Government recommends that the Court impose a sentence of 120 months'  
5 imprisonment, which represents the high end of the agreed-upon range and an upward  
6 departure from McIntosh's sentencing range under the Sentencing Guidelines. As the  
7 Court is well aware, following the Supreme Court's decision in United States v. Booker,  
8 125 S. Ct. 738 (2005), the Sentencing Guidelines are merely one of a number of factors  
9 that a court must consider in sentencing. Other factors, which are set forth in 18 U.S.C.  
10 § 3553(a), include the need to punish the defendant, and the need to protect the public  
11 from the defendant. In this case, those factors support a sentence of 120 months'  
12 imprisonment.

13 First, the Government had some evidence that McIntosh used a destructive device  
14 in the arson of the McDonald's restaurant to which he pled guilty. Had the Government  
15 successfully prosecuted and convicted McIntosh under 18 U.S.C. § 924(c), McIntosh  
16 would have faced a total statutory mandatory minimum sentence, and a guidelines  
17 sentencing range, of 35 years' imprisonment. Thus, although a 120-month sentence  
18 reflects an upward departure for the crime of Arson, this sentence is drastically lower than  
19 a guidelines calculation that might have applied in McIntosh's case. As a result, a  
20 sentence of 120 months is, in some sense, not an upward departure from the sentencing  
21 range recommended under the Sentencing Guidelines.

22 Second, McIntosh has a not-insubstantial criminal history. McIntosh is not  
23 someone whose only brushes with the law stem from his environmental activism.  
24 Instead, McIntosh has a lengthy history of committing crime. Thus, McIntosh has  
25 convictions for Assault and Shoplifting and a federal conviction for Possession of Stolen  
26 Mail for which he received five months' imprisonment, and then ten more months  
27 following a revocation of his supervised release. Moreover, McIntosh has myriad other  
28

1 arrests, and his criminal history almost certainly would be far worse had he not  
2 panhandled around the country and simply failed to appear in various cases.

3 Third, and most important, a sentence of 120 months is needed to protect the  
4 public. The Government believes that McIntosh is without remorse for his crime.  
5 Indeed, the Government suspects that McIntosh is proud of his crime, and, given the  
6 chance, he would do the same thing again. The Government is concerned that McIntosh  
7 will commit additional arsons when he is released. In light of this fact, a sentence of 120  
8 months' imprisonment, rather than the minimum 96 months' imprisonment allowable  
9 under the Plea Agreement, will provide added time for McIntosh to mature, and thereby  
10 will provide the public needed protection.

#### 11 **IV. CONCLUSION**

12 For the foregoing reasons, the Court should sentence McIntosh to 120 months'  
13 imprisonment, to be followed by three years' supervised release, and should order  
14 McIntosh to pay \$5,000 in restitution, a \$10,000 fine, and a \$100.00 penalty assessment.

15 DATED this 13th day of December, 2005.

16 Respectfully submitted,

17 JOHN McKAY  
18 United States Attorney

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21 Assistant United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on the 13<sup>th</sup> day of December, 2005, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via U. S. States First Class Mail or via facsimile.

s/Elisa G. Jimenez  
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